IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1348 OF 1996
IN
SHOW CAUSE NOTICE NO.807 OF 1996
IN
SHOW CAUSE NOTICE NO.894 OF 1996
IN
SUIT NO.1010 OF 1973

The Ward Officer (Estate),
Municipal Corpn. of Greater Mumbai Appellant

versus

Nandlal Balkrishnan & others Respondents

Mr.Gaikwad with Mr.Vasant Mahadik i/by Smt.A.H.Chheda & Co. for appellant.

Mrs.S.R.Moghe i/by M/s.Mehta & Girdharlal for respondents 2(b) and 2(d).

CORAM : DR.S.RADHAKRISHNAN AND
S.C.DHARMADHIKARI, JJ.

DATE : 19th October 2005

PC :

1. Heard learned counsel for the Appellant and the Respondents. This Appeal has been filed by the Ward Officer (Estate) of Municipal Corporation of Greater Mumbai challenging the order of learned Single Judge dated 11th October 1996 whereby the learned Single Judge had found the said Ward Officer (Estate) guilty of committing Contempt of Court, and had been

sentenced to undergo imprisonment for a period of two weeks and also to pay a fine of Rs.2,000/-.

2. The brief facts are that there was a restaurant known as M/s.Flora Restaurant at Worli which was a partnership property and in view of the fact that there was dissolution of partnership, in a suit filed by the partner, the Court Receiver, High Court, Bombay stood appointed with regard to the said property. There was an allegation that the said restaurant was being run without the permission of the Court Receiver and there was also a Liquor Bar in the said premises. These allegations have been made by the Court Receiver by his reports dated 3rd March 1995, 28th July 1995 and 2nd August 1995. Considering the aforesaid reports, this Court by it’s order dated 6th December 1995, came to a conclusion that the Bombay Municipal Corporation ought not have renewed the licences without obtaining permissions from the landlord and the Court Receiver.

3. This order was challenged by the original Lessee before the Hon’ble Supreme Court. The Supreme Court in it’s order dated 2nd April 1996 granted interim stay of the operation of the

order dated 6th December 1995. The said order reads thus :-

> "There will also be an interim stay of the operation of the order in so far as it directs the Bombay Municipal Corporation not to renew the licence issued to the petitioner. We, however, make it clear that we have not expressed any opinion about renewal and we have not directed for renewal of the licence. Any consideration for renewal will be strictly on the merits of the case."

4. It appears that pursuant to the said order, the Bombay Municipal Corporation had considered the application on merits and renewed the licence. Before renewing the licence, it appears that the Municipal Corporation had also waived the condition of lease which is granted to the original lessee whereby no refreshment room, stall or shop for sale of any intoxicants or liquor would be permissible in the said premises.

5. When the above show cause notice was taken up for hearing, it was pointed out to the learned Single Judge that the said condition of waiver of the aforesaid condition was already suspended. To put in other words, the said condition in the original lease of the Bombay Municipal Corporation stood revived. It also appears that

at the earliest point of time the Appellant had tendered an unconditional apology as indicated in paragraph 13 of the learned Single Judge’s order.

6. The learned Single Judge had proceeded on the basis that though the Supreme Court had permitted the Bombay Municipal Corporation to consider the application for renewal on merits, even then the Bombay Municipal Corporation ought to have insisted for a prior consent from the Court Receiver.

7. We have perused the order of Supreme Court. The Supreme Court was aware that the said premises was in possession of the Court Receiver and the Supreme Court had not imposed upon any such condition, over and above the Appellant had unconditionally apologised before this Court at the earliest and the waiver of the lease condition was also suspended. The learned counsel for the Respondents submits to the orders of this Court.

8. Having regard to the aforesaid facts and circumstances, this is not a fit case wherein this Court should exercise it’s jurisdiction initiating contempt action and to find the

appellant guilty of committing contempt. Hence, we set aside the impugned order dated 11th October 1996. The aforesaid sum of Rs.2,000/- paid as fine be refunded to the Appellant. Prothonotary and Senior Master of this Court to act on an authenticated copy of this order. Authenticated copy be issued to the parties.

(DR.S.RADHAKRISHNAN, J.)

(S.C.DHARMADHIKARI, J.)